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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,203	09/18/2003	Rong Wen	MACUS.002A	5747
20995 7590 11/18/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER				
FAY, ZOHREH A				
ART UNIT		PAPER NUMBER		
1612				
NOTIFICATION DATE		DELIVERY MODE		
11/18/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

### Office Action Summary

**Application No.**

10/665,203

**Applicant(s)**

WEN ET AL.

**Examiner**

ZOHREH A. FAY

**Art Unit**

1612

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 30-34, 37-39, 41-48, 50-56 and 63-74 is/are pending in the application.
- 4a) Of the above claim(s) 75, 122, 125, 127-130, 132 and 134 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-34, 37-39, 41-48, 50-56 and 63-74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Claims 30-34, 37-39, 41-48, 50—56 and 63-74 are presented for examination.

Claims 75, 122-125, 127-130, 132 and 134 are withdrawn from examination.

The amendments and declaration filed on July 10, 2009 have been received and entered.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 39, 41-48 and 50-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The above claims are indefinite as to the terms "CC1-779"; "AP23841", "ABT-578". Such terms fail to set forth the chemical structure or name of the compounds.

Claims 30-34, 37-39, 41-48, 50-56 and 63-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mollison (US 6,015,815) in view of Kulkarni (US 5,387,589) and further in view of Hu et al. (US 5,800,807) for the reasons set forth on pages 3-5 of the office action of January 12, 2009 and the following reasons

Hu et al. teach the use of propylene glycol as a safe delivery vehicle for ophthalmic drugs. The above reference makes clear that propylene glycol has been safely and routinely used in ophthalmic compositions.

Applicant's arguments and declaration have been carefully considered. Applicant in his remarks and declaration is trying to show the damage associated with the use of propylene glycol if such agent has been administered in the eye. Applicant is

reminded that the submitted declaration uses 90-100% propylene glycol. Furthermore, Mollison reference in column 12 indicates propylene glycol as a carrier for a composition having rapamycin. Such reference demonstrates that a person skilled in the art can modify the concentration of an agent such as propylene glycol and use it for pharmaceutical application. Applicant in his remarks also argue the lack of teaching of wet macular degeneration in the relied upon references. Applicant is reminded of his election of macular degeneration in response to the restriction requirement. Furthermore, claim 5 is directed to use of "an effective amount of rapamycin to treat the age-related macular degeneration".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZOHREH A. FAY whose telephone number is (571)272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fredrick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ZF  
/Zohreh A Fay/  
Primary Examiner, Art Unit 1612